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SECTION 150, CIVIL PROCEDURE CODE: ITS SCOPE AND EFFECT.

Section 150, Civil Procedure Code, has been the subject of much criticism of a varying nature. No one could deny that when business of whatever nature is transferred in whatever manner, from one Court to another, the latter Court should ordinarily have the same powers and perform the same duties as those respectively conferred and imposed by or under the Code of Civil Procedure upon the former Court. There are certain special provisions in the Code by which the first Court retains some powers exclusively for itself and section 150, Civil Procedure Code, is careful in not extending its operation to those provisions. It is an enabling provision enunciating an existing rule of law. It operates generally and in cases where special provisions are not made or where those provisions are found insufficient.

The wording of the section makes it clear that no *powers* of transfer are conferred under it; it only states what shall happen as a result of a transfer. It does not attempt to lay down how transfers could be made, whether by special orders of Court acting under the provisions of the Civil Procedure Code, or by official notifications in the Government Gazette as to change of jurisdiction. It would, therefore, be incorrect to speak of transfers under section 150, Civil Procedure Code, as we speak of transfers under section 24, Civil Procedure Code. Discussions are to be found in cases as to whether section 150 applies to pending proceedings; whether it applies to a transfer under section 24, Civil Procedure Code or only to a transfer of business as a result of a change of jurisdiction; whether it

operates when a partial transfer of business is made or only when there is a complete transfer, *i.e.*, when a Court ceases to exist and another is substituted for it and lastly whether it applies to execution proceedings.

The first thing to note is the effect of the opening words "Save as otherwise provided". When the question of applying section 150 arises, look for special provisions, if any, dealing with the subject-matter. If there are none or if they do not satisfy the requirements then only think of applying section 150. The next question is, what is meant by "business of a Court." The business of a Court is to act within its jurisdiction, *i.e.*, to exercise the jurisdiction conferred upon it. The jurisdiction is conferred by Chap. III of the Civil Courts Act. It may be (*a*) over the parties, (*b*) over the subject-matter, (*c*) local, and (*d*) pecuniary. If the Local Government or any other subordinate authority empowered under the said Chap. III takes away from one Court any portion of the four kinds of jurisdiction and gives it to another Court, there is to that extent a transfer of business from one Court to another. Such transfers are usually made by official notifications. They may affect proceedings which have come to a close and also those that are pending, as they will certainly govern institutions in the future.

As regards execution proceedings, it has been shown in a previous article (*"Transfer of Territorial Jurisdiction and Execution Applications"*)[1] how problems arising out of a transfer of jurisdiction can be solved, as they have to be, without reference to section 150. We shall now examine some cases on the subject and see if the application of this section thereto is either necessary or justifiable.

The section was first discussed by Sadasiva Aiyar, J., in *Subbiah Naicker v. Ramanathan Chettiar*[2]. This case, specially Justice Sadasiva Aiyar's interpretation of the section and its application to execution proceedings, has been the cause of innumerable difficulties and confusing problems created thereafter. In execution of a money decree, the Srivilliputhur Munsif's Court attached certain properties and the sale was finally fixed for some day in 1910. Meanwhile, when the Ramnad District was newly formed, these properties were allotted to the jurisdiction of the Additional District Munsif's Court of Tinnevelly. The decree-holder filed an application in the Tinnevelly Court

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1. 58 M.L.J. 1 (Jour)
2. (1914) I.L.R. 37 M. 462: 26 M.L.J. 189.

to continue the proceedings already started in the other Court, a very proper thing to do. But the District Munsif dismissed the application. The District Judge on appeal allowed it, applying section 37 of the Code, as in his opinion the Srivilliputhur Court should be deemed to have ceased to exist to the extent of the loss of jurisdiction. He further held that section 150 did not apply to such cases, not on the ground that there are special provisions, *i.e.*, "That they are otherwise provided"; but that section 150 applied only to transfers under section 24, Civil Procedure Code, or by any similar order of a superior Court The High Court held that the Srivilliputhur Court "ceased to have jurisdiction to execute" the decree within the meaning of section 37, Civil Procedure Code. This was sufficient to dispose of the application. But it went on to state at page 472, "It seems to us on principle that unless the authority which changes venue reserves the right to the Court which has lost the jurisdiction to continue pending proceedings (affecting the property so transferred to another jurisdiction), such proceedings are also *ipso facto* transferred by the change of venue, to the new Court, the records relating to the action becoming part of the records of the new Court." The High Court came to the above conclusion not on a construction of the language of section 150 but on an interpretation of the law on the authority of certain American treatises, the reference to which proved later a matter for regret.

The principle thus enunciated involves two statements: (1) When there is a transfer of territorial jurisdiction from one Court to another, the former Court loses jurisdiction even over pending proceedings, including original suits. (2) There is no necessity for a formal transfer of these proceedings to the proper Court. As regards the first statement, the correct position seems to be that on a change of territorial jurisdiction, a Court does not lose jurisdiction to dispose of pending suits and proceedings, subject to the general principle that a Court cannot sell a property or arrest a person outside its jurisdiction But on a transfer of business by transfer of jurisdiction other than local, a Court may cease to be competent to dispose of a pending proceeding. For instance, take the case of a Court being deprived of small cause powers; or a suit say of the value of Rs. 1,500 instituted in a Court having jurisdiction to try suits up to Rs. 2,000 and subsequently reduced to Rs. 1,000. In such cases a transfer of business of this kind may affect even pending proceedings. But then the records

won't automatically go to the Courts that may be considered proper Courts; and the parties have to apply for a transfer or the superior Court has to do it of its own motion under section 24 or any section of the Civil Procedure Code. In some cases there may have to be some judicial consideration as to whether the change of venue or any other kind of transfer of business affects the competency of the Court in which the proceeding is pending. Again there may be involved in the suit more than one property situate within the jurisdiction of different Courts. So it is clear that so far as pending proceedings are concerned, some particular order may be necessary to transfer them to proper Courts. Vide *Ramanathan Chetty* v. *Alagappa Chetty.*[3]

In the case of *Kajana Venkoba Rao* v. *Sastha Aiyar*[4] Sadasiva Aiyar, J., following *Subbiah Naicker* v. *Ramanathan Chettiar*[5], said: "For similar reasons, we hold that the Tuticorin Revenue Court acquired jurisdiction over the revenue suit in question on the publication in the Gazette notification transferring the plaint area to it, and that no order of transfer by the High Court was necessary for it to acquire such jurisdiction". No doubt for the purpose of acquiring jurisdiction the Gazette notification was enough; and in fact the Civil Procedure Code could not confer such jurisdiction. But to enable the proper Court to take the suit on its file some order of the superior Court would seem to be necessary.

Another case in which section 150 would seem to have been applied unnecessarily is *Venkatachellam* v. *Seethayamma*[6]. There the District Court of Masulipatam transferred under section 24, Civil Procedure Code, a suit on its file to the Court of the Temporary Subordinate Judge of that place, which had no local jurisdiction assigned to it. After decree, a petition for execution was put in in that Court praying for attachment of some properties. In the High Court both the Judges (Sadasiva Aiyar and Moore, JJ.) agreed that the decree has to be transmitted to the proper Court for execution, and Moore, J., expressly stated that the Subordinate Judge instead of dismissing the application ought to have directed the decree-holder to apply to have the decree sent for execution to the proper Court. This was sufficient to dispose of the case. But it was argued that on a transfer of the suit by the District Court, the Subordinate Court under section 150, Civil Procedure Code, got all the powers of the District Court including

3 (1929) I.L.R. 53 M. 378: 59 M.L.J. 102.

4. (1914) 2 L.W. 255. 5. (1914) 26 M.L.J. 189.

6. (1916) 31 M.L.J. 22.

jurisdiction to attach and sell properties just as if it had been given jurisdiction over the properties. In answer to the above argument it is submitted (1) that there are special provisions in respect of execution proceedings and so it is unnecessary to invoke the application of section 150, Civil Procedure Code, (2) that territorial jurisdiction is a condition precedent to effective execution of a decree, and (3) territorial jurisdiction cannot be conferred by the Code and *a fortiori* either by section 24 or 150, Civil Procedure Code. But Sadasiva Aiyar, J., referring to *Subbiah Naicker* v. *Ramanathan Chettiar*[2], stated in *Venkatachellam* v. *Seethayamma*[6] at p. 24 that "section 150 relates to the business generally of a Court arising over the whole area or in defined particular areas within its jurisdiction being transferred to another Court owing to the change of venue effected by legally competent notifications of the Local Governments, while S. 24 contemplates the transfer of a particular case or cases pending at a particular time by a special order of a superior Court." This construction of the section is narrow in the first place by not including in it transfer of business arising out of transfer of jurisdiction other than local, and secondly, in excluding from it the transfer of particular business under section 24, Civil Procedure Code. There is no harm in applying section 150 to transfers under section 24; nor does there seem to be any point in so restricting its operation, for section 150 only says that the Court to which a transfer is made shall have all the powers conferred on the first Court *under the Code;* and the territorial jurisdiction is not conferred by the Code.

The views of Sadasiva Aiyar, J., were religiously followed by a subordinate Court and were not accepted by Oldfield and Phillips, JJ., in *Gulam Kausha* v. *Bhuvaraha Aiyangar*[7]. The judgment in this case is short and there is no discussion of the subject. But the judgment of the Subordinate Judge is an indication as to how the views of Sadasiva Aiyar, J., expressed in *Subbiah Naicker's* case[2] have been fully utilised and expanded by Subordinate Courts. A decree of the Subordinate Court of Tanjore directed three items of properties to be sold for a specified sum of money. One of them was sold there; but as the other two items were situate within the jurisdiction of Mayavaram Sub-Court, the decree was transmitted to the latter

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2 (1914) I.L.R. 37 M. 462: 26 M.L.J. 189.
6. (1916) 31 M.L.J. 22
7. (1916) 38 I.C. 152.

Court for effective execution, and it sold these two items. There still remained a balance under the decree which had to be realised by attachment and sale of certain other properties. The decree-holder put in a petition for the purpose in the Kumbakonam Sub-Court, on the ground that the area in which these properties and the two items already sold were situate had been transferred meanwhile from the jurisdiction of the Mayavaram Sub-Court to that at Kumbakonam. If only the proper sections had been applied, it would be seen that the Kumbakonam Court would have no power to entertain the petition without the decree being transmitted to it by the Tanjore Sub-Court. Without saying that section 150 as a rule does not apply to execution proceedings, it is sufficient to say that when there are special provisions, section 150 need not be invoked. It is true that on a transfer of business, the Kumbakonam Court should have all the powers conferred on the Mayavaram Court by the Code. One of such powers is that it can execute a decree transmitted to it; and of course the Kumbakonam Court will have the power to execute the same when the decree is in turn transmitted to it by the Tanjore Sub-Court. And it does not mean that when one Court transmits a decree to another Court for execution, it is a general order to all Courts that might acquire competency to execute it.

It would have been better if the Full Bench case of *Seeni Nadan* v. *Muthuswami Pillai*[8] had been decided without reference to S. 150. Sir John Wallis, C.J., said that: "The case of direct application to the Court to which the area had been transferred was met by the enactment of the new section 150." Ayling, J., would prefer to base his proposition on section 150 rather than section 37 regarding which he confessed to considerable difficulty; and Sadasiva Aiyar, J., had very little to add to the judgment in *Subbiah Naicker's* case[2]. It is unnecessary to make a detailed criticism of this case here as it has been dealt with in the previous article *"Transfer of Territorial Jurisdiction and Execution Applications"*[1].

The case of *Aminuddin Mullick* v *Atarmani Dasi*[9] affords an illustration of a transfer of business other than by transfer of territorial jurisdiction. A mortgage decree was passed by the second Munsif of Howrah who had jurisdiction to try

1. 58 M.L.J. 1 (Journ.).
2. (1914) I.L.R. 37 M. 462: 26 M.L.J. 189.
8. (1919) I.L.R. 42 M. 821: 37 M.L.J. 284 (F.B.).
9. (1920) I.L.R. 47 C. 1100.

suits up to the value of Rs. 2,000. He was transferred and his successor was not yet vested with such powers. So the final decree was passed by the Subordinate Judge of Howrah. Then the Munsif got those powers and execution was taken in his Court. On a proper construction of sections 37 and 38, Civil Procedure Code, the Subordinate Court of Howrah ceased to have jurisdiction to execute the decree and so the Munsif's Court may be included in the term "Court which passed the decree". However, the learned Judges found difficulty in applying sections 37 and 38 and so found help in section 150.

The learned Judges in *Mahamad Kazem Ali* v. *Naimuddin Ahmed*[10] would prefer to base their conclusion on section 37 and the question what effect the words "save as otherwise provided" in section 150 have did not in the view they took of the case arise for decision. Possibly Chatterjee, J., who was a party to this case and the earlier case *Aminuddin Mullick* v. *Atarmani Dasi*[9] would like to reconsider his views on the application of section 150 to such cases arising in execution.

In *Ranganatha Rao* v. *Hanumantha Rao*[11] we find for the first time section 150 applied to a case not arising in execution. Here it is that the section finds its proper place. Spencer, J., says: "Section 150 which appeared for the first time in the Civil Procedure Code of 1908 provides for a Court to which the business of any other Court is transferred having the same powers as the Court from which the business is so transferred. But this useful provision is qualified by the words 'save as otherwise provided' and the question in the case before us is whether the wording of O. 9, R. 13 of the Code of Civil Procedure is such as to take away the power of a Court that has territorial jurisdiction over the subject-matter of a suit to set aside an *ex parte* decree passed by another Court that originally tried it" or in other words where the whole business of a Court is transferred to another Court, whether the expression "the Court which passed the decree" in O. 9, R. 13 is so definite and precise as to create an exception to the general rule introduced by section 150. A liberal construction was put upon section 150 and O. 9, R. 13 and it was held that the District Munsif's Court of Anantapur had jurisdiction to deal with the petition though the decree had been passed by the Munsif's

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9. (1920) I.L.R. 47 C. 1100. 10 (1921) 70 I.C. 210.
11. (1922) I.L.R. 46 M. 1: 42 M.L.J. 344.

Court of Penukonda. It was argued that section 150 applied only when the whole of the business of a Court has been transferred or in other words where a Court has been abolished and another substituted in its place and not to a case of partial adjustment of jurisdiction and partial transfer of business. Krishnan, J., had no hesitation in rejecting the argument as it would greatly reduce the scope and usefulness of section 150. He avoided all reference to section 37 and to cases under it; for they all refer to proceedings in execution.

A similar occasion arose in *Momna Guruswami Naicker* v. *Sheik Mahommadhu Rowther*[12], for considering whether there is anything in the wording of O. 39, R. 2 (3) to exclude the application of section 150 by bringing it within the words "save as otherwise provided for". An order of injunction passed by the Madura Sub-Court in a certain suit was disobeyed but the petition to have the defendant punished for disobedience was filed in the Dindigul Sub-Court as there had been a readjustment of territorial jurisdiction in the areas concerned. Their Lordships Krishnan and Venkatasubba Rao, JJ., saw no difficulty in holding that the Legislature in re-drafting the section had no intention to give special significance to the words "the Court granting the injunction" in O. 39, R. 2 (3) and that therefore the operation of section 150 was not excluded.

One of the points that arose for decision in *Rajagopala Pandarattlviar* v. *Tirupathia Pillai*[13] was whether a District Court acting under section 24, Civil Procedure Code, could transfer an execution proceeding to another Court, so as to invest that other Court with jurisdiction to sell properties not within that Court's local jurisdiction. It would appear that territorial jurisdiction which is a condition precedent to effective execution could not be conferred on a Court by any section of the Code, be it section 24 or 150 and Venkatasubba Rao, J., seems to go rather too far in holding that a superior Court acting under section 24 can confer such jurisdiction. Section 24 no doubt applies to proceedings in execution and the powers under this section are not exactly similar to the powers of the Court passing the decree to transmit it to any other Court. But the view indicated above would not (as apprehended by the learned Judge) render S. 24 almost useless so far as execution proceedings are concerned. A superior Court can under section 24 transfer an execution proceeding to another Court

12. (1922) I.L.R. 46 M. 83: 43 M.L.J. 713.
13. (1925) I.L.R. 49 M. 746: 50 M.L.J. 161.

irrespective of territorial jurisdiction for the purpose of disposal of a claim or adjudication of any rights of parties that may arise in execution.

The principal authority for the proposition that territorial jurisdiction is a condition precedent to the Court selling the property is *Satrucherla Sivaskanda Raju* v. *Ramachandra Deo.*[14]

The necessity to apply section 150 to proceedings in execution arose on the facts of *Manikka Goundan* v. *Loganatha Mudaliar*[15]. But the learned Judges Venkatasubba Rao and Madhavan Nair, JJ., preferred to base their decision on the Full Bench ruling in *Seeni Nadan* v. *Muthuswami Pillai*[8]. In the previous article, *"Transfer of Territorial Jurisdiction and Execution Applications"*[1] it has been shown how this Full Bench case can have no application to the facts which were very similar to those in the case of *Gulam Kavusha* v. *Bhuvaraha Aiyangar*[7]. There was a money decree passed by the High Court on its Original Side. Under section 39, the decree was transmitted to the Sub-Court at Vellore which attached certain properties and sold only two. Meanwhile the area wherein these properties were situate was transferred to the jurisdiction of the Sub-Court at Chittoor. The decree-holder applied to the High Court (the Court which passed the decree) to withdraw the proceedings from the Vellore Court and to re-transmit the decree to the Chittoor Court. The Chittoor Court sold the remaining properties without a fresh attachment. It appears that the judgment-debtor disposed of the properties by means of a private sale after the attachment by the Vellore Court; and it was necessary that the attachment should be held subsisting. An attachment once validly made subsists until it is raised by an order of the Court or by virtue of some provisions of the Code; for instance, when a petition is dismissed on account of the default of the decree-holder. Venkatasubba Rao, J., holds that the attachment did not come to an end when territorial jurisdiction was transferred. But can the Chittoor Court sell the properties without a fresh attachment? A subsisting attachment may invalidate an alienation. But unless it is possible to say that attachment by Vellore Court is in some way equivalent to the attachment by Chittoor Court, can the latter Court effectively sell the properties? Venkatasubba Rao, J.,

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1. 58 M.L.J. 1 (Jour). 7. (1916) 38 I.C. 152.
8. (1919) I.L.R. 42 M. 821: 37 M.L.J. 284 (F.B.)
14. (1927) I.L.R. 50 M. 882: 52 M.L.J. 605 at 608, 609.
15. (1929) 30 L.W. 649.

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does not accept the proposition, that in cases where attachment has to precede a sale, that attachment has to be made by the Court which sells. According to him, it would be enough if there was an attachment by whatever Court. The result would be that a Court before it sells has only to see that the property has been attached, not necessarily by itself, but by any Court, possibly not necessarily in respect of the same decree, but in respect of a different decree of a different person. The difficulty and confusion that would arise thereby is obvious.

The true remedy would seem to lie in section 150 and this is made clear in the judgment of Madhavan Nair, J. "The argument that the Chittoor Court in this case has no jurisdiction to sell the properties overlooks the provisions of section 150, Civil Procedure Code. If it can be said that when territorial jurisdiction over some of the properties subject to its jurisdiction has been transferred from one Court to another, the business of that Court is to that extent transferred to the new Court, then it is clear that by force of this section, the Chittoor Court in this case as the Court to which the business has been transferred has power to sell the properties in question without issuing a fresh order of attachment." The Vellore Court had attached the properties and so had power to sell; and the same power has been transferred to the Chittoor Court. Only two things are necessary: (1) that the Chittoor Court should have territorial jurisdiction to sell, and (2) that the Chittoor Court should have seisin of the proceedings by proper procedure under the Code. The two tests are satisfied here. If *Subbiah Naicker's* case[2] and *Seeni Nadan's* case[8] were to be followed in the way suggested by their Lordships, the decree-holder can put in a petition in the Chittoor Court without any order transmitting the decree by the High Court. But the decree-holder has rightly chosen to take that step in the High Court. It might have been equally good, if not better, if he had applied by means of an original petition, to the High Court (not as the Court passing the decree) under section 24, Civil Procedure Code, to transfer the proceedings from the Vellore Court to the Chittoor Court.

It only remains to consider the case of *Subramania Aiyar v. Swaminatha Chettiar*[10]. The learned Judges Ramesam and Devadoss, JJ., had not only to combat the views of Sadasiva

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2. (1914) I.L.R. 37 M. 462: 26 M.L.J. 189.
8. (1919) I.L.R. 42 M. 821: 37 M.L.J. 284 (F.B.).
10. (1928) 28 L.W. 885.

Aiyar, J., on section 150, but also to fight hard against the view of Sir John Wallis, C.J., and Ayling, J., that S. 150 could be applied to such cases arising in execution. Devadoss, J., states the position thus: "The opening words of the section 'save as otherwise provided' have to be given their meaning. It is only in cases which are not otherwise provided for, that the provisions of section 150 could be invoked. . . . . . There are a number of provisions in the Code which cannot be held to apply to the Court to which the business is transferred. . . . When sufficient provision is made for the proper execution of decrees, it is not proper to import into section 150 something which the Legislature did not specifically put into it and which it would have done if it was its intention to do so". But observations are made that section 150 applies only to transfer of pending business. Otherwise, in their opinion, it will lead to practical difficulties. It is, however, submitted that the difficulties will be minimised to a great extent if the section is properly applied. Further, even in their view of the case, those difficulties are sure to exist in cases of transfer of business by transfer of jurisdiction other than territorial.

The foregoing discussion leads to the following main results. The transfer of business referred to in section 150 can be made either under section 22 or 24, Civil Procedure Code or under Chapter III of the Civil Courts Act. It may affect pending proceedings also. It has to be applied when there are no special provisions in the Code; or when they fail to satisfy the requirements. Section 150 is not a provision for transfer but is only an enabling section which says what follows on a transfer of business. When a transfer of business affects a pending proceeding, the same has to be taken to the proper Court under some procedure laid by the Code; and the records won't *ipso facto* form part of the records of the other Court. If these principles are kept in view, many of the questions arising in such cases and some of the difficulties cropping up may be easily solved.

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CRITICAL NOTE.

(Order 17, Rr. 2 and 3, Civil Procedure Code.)

KO THA LIN BWIN *v.* KO HLA KYE, I.L.R. 8 Rang. 168.

After the framing of the issues, the suit was adjourned to a particular date and as it could not go on on that date, it was adjourned peremptorily to a later date. On that day again it was adjourned *at the request of the defendant* on the ground that his pleader was ill. The Court particularly remarked that if the pleader should not be well by the adjourned date, the defendant must make other arrangements and proceed with the trial on that date. On that date, the defendant himself was absent. Thereupon, the Judge examined the plaintiff and a witness on his behalf and decreed the suit. The next day the defendant applied to have the decree set aside on the ground that he had mistaken the date of hearing but that application was dismissed as misconceived on the ground that the decision must be treated as one on the merits under O. 17, R. 3, Civil Procedure Code. The High Court held that the case really fell under R. 2 and that therefore the petition to restore lay.

Rules 2 and 3 of O. 17 have given rise to a good deal of controversy and it must be admitted that they are not happily worded. As they overlap to a certain extent, questions have frequently arisen as to the rule properly applicable when as here a case falls under both the rules. A strict view has sometimes been taken that R. 3 deals with a special case, that the non-appearance is really but a part of the default in the performance of the act for which time has been granted and therefore it must be applied when circumstances render it applicable. (See *Comalammal* v. *Rangaswami Aiyangar*[1], *Rangaswami Mudaliar* v. *Sirangan*[2] and *Badam* v. *Nathu Singh*.[3]) A liberal view has also been taken, namely, that R. 2 alone must be applied when a party is not in attendance as the first question for the Court on the day of hearing is "are the parties in attendance" and not "has the party done what he has been asked to do". See *Chandramathi Ammal* v. *Narayanaswami Aiyar*[4] and *Pichamma* v. *Sreeramulu*[5]. Those advocating this view are largely influenced by the considerations tellingly put by Justice Mukherji in two cases in *Ram Adhin* v. *Ram Bharose*[6] and *Ganesh Lal*

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1. (1868) 4 M.H.C.R. 56
2. (1869) 4 M.H.C.R. 254.
3. (1902) I.L.R. 25 A. 194
4. (1909) I.L.R. 33 M. 241: 19 M.L.J. 760
5. (1917) I.L.R. 41 M. 286: 34 M.L.J. 24 (F.B.).
6. (1924) I.L.R. 47 A. 181.

Har Narain v. *Debi Das*[7], though the priority in situation of R. 2 over R. 3 is also relied on. An intermediate view has also been put forward that where there are materials on record for a decision on the merits, R. 3 ought to be applied, but where there are no materials R. 2 should be applied. This view is sought to be based on the difference in the words "dispose of the suit" in R. 2 and "decide the suit" in R. 3 (see *Mariannissa* v. *Ramkalpa Gorain*[8], *Enatulla Basunia* v. *Jiban Mohan Roy*,[9] *Sashibhushan Kumar* v. *Dwarka Prasad*,[10] *Har Gopal* v. *Harish Chandra*[11], *Ratna Bai* v. *Shankar*[12], *Ningappa* v. *Gowdappa*[13] and *Sher Ali* v. *Mangu*[14]) and in some cases reliance is also placed on the use of "may" in R. 3 in place of "shall" which appeared in the corresponding section 148 of the 1859 Code (Act VIII of 1859). This change, it is argued, renders R. 3 an enabling section and not compulsory and gives a discretion to the Court which has to be judiciously exercised by applying it only to cases where there are materials on record. This limited view was approved of by Mr. Mulla in the 8th edition of his Civil Procedure Code, but it has been omitted from the 9th edition. This view does not state the extent of the materials necessary for action under R. 3.

The remedies for the party aggrieved largely depend upon the rule under which the order falls and it may lead to grave injustice if the distinction should be rested on vague and ill-defined bases. It is rarely that the Court states the rule under which it passes the order, though as suggested in *Naurang Ram Sahu* v. *Bhakori Mandar*[15] it should be careful to state whether it is acting under R. 2 or R. 3 of O. 17. What is considered sufficient materials for one Judge may not be sufficient for another and a suitor will have to act at his peril in choosing his remedy to get the order vacated. In so far as the distinction is based on the difference between "dispose of" and "decide" in the two rules, it has been disapproved of in Madras in *Chandramathi Ammal* v. *Narayanaswami Aiyar*[4]. Even the liberal view may at times lead to hardship (see *Ningappa* v. *Gowdappa*[13] and *Subramania Othuvar* v. *Munusamiya Pillai*[16]) but Kumaraswami Sastri, J, points out in *Pichamma* v. *Sree-*

4 (1909) I.L.R. 33 M 241. 19 M.L.J. 760

7 (1924) I.L.R. 47 A. 140

8. (1907) I.L.R. 34 C. 235.

9 (1914) I.L.R. 41 C 956

10 (1921) 3 Pat. L. T. 64.

11 (1918) 48 P.R. 1919

12. (1922) I.L.R. 46 B. 1026.

13 (1905) 7 Bom. L. R. 261

14 (1919) 52 I.C. 292.

15. (1919) 4 Pat. L. J. 272.

16. (1915) 39 I.C. 869.

ramulu[5], that the balance of hardship is the other way. (*See* his observations at p. 294.)

Ever since *Chandramathi Ammal* v. *Narayanaswami Aiyar*[4], the cases generally lean to the liberal view held in *Pichamma* v. *Sreeramulu*[5]. But in *Jhanda Singh* v. *Sadiq Muhammad*[17] the strict view is stated though in the case there were materials for decision, the case having been adjourned for arguments. The case is almost like *Anandaraju* v *Venkataraju*[18] where the materials were complete It may require reconsideration. Broadway, J., has to a certain extent misread *Pichamma* v. *Sreeramulu*[5], *Mariannissa* v. *Ramkalpa Gorain*[8], *Enatulla Basunia* v. *Jiban Mohan Roy*[9] and *Phul-Kuer* v. *Hashmat Ullah Khan*.[10] He relies on *Badam* v. *Nathu Singh*[19] and *Naganatha Aiyar* v. *Krishnamurthi Aiyar*[20] which have not been followed in the later cases. From the observations of Wallis, C.J., at page 290 in *Pichamma* v. *Sreeramulu*[5] that "in so far as we laid down in *Chandramathi Ammal* v. *Narayanaswami Aiyar*[4], that the two rules must be read as mutually exclusive, I think we went too far," it is too much to infer that His Lordship differed from his brother Judges. His Lordship begins his judgment by saying "I am of opinion that *Chandramathi Ammal* v. *Narayanaswami Aiyar*[4] was rightly decided" and later proceeds to say that in a case where the plaintiff appears, leads evidence and gets a decision in his favour on the merits, the Court may act under R. 3 but even that disposal will be none the less both in fact and in law *ex parte* and the decree will be liable to be set aside by the defendant under O. 9, R. 13. *Mariannissa* v. *Ramkalpa Gorain*[8] specifically disapproves of *Rangaswami Mudaliar* v. *Sirangan*[3] and *Comalammal* v. *Rangaswami Aiyangar*[1] and at page 239 states that if the case falls under S. 157 (O. 17, R. 2), then even though any of the contingencies contemplated by S. 158 (O. 17, R. 3) has happened the Court may proceed under Chap. VII (O. 9). In *Enatulla Basunia* v. *Jiban Mohan Roy*[9] the observations were all *obiter* in the view that the Judges took that the Subordinate Judge proceeded under R. 2, the adjournment not having been at the instance of the parties.

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1 (1868) 4 M.H.C.R. 56 2 (1869) 4 M.H.C.R 254
3. (1902) I.L.R. 25 A 194. 4 (1909) I.L.R. 33 M 241: 19 M.L.J. 760
5 (1917) I.L.R. 41 M. 286: 34 M L.J. 24 (F.B.).
8. (1907) I.L.R. 34 C. 235. 9. (1914) I.L.R. 41 C. 956
17. (1923) I.L.R. 5 Lah. 218
18. (1914) 1 L.W. 428. 19. (1915) I.L.R. 37 A. 460.
20. (1910) I.L.R. 34 M. 97: 20 M.L.J. 535.

Whatever may be the result of a strict reading of the rules it will not be in accordance with justice to refuse a party who had failed to appear on the adjourned date the chance of having the suit restored for sufficient cause. (See *Ratna Bai* v. *Shankar.*[12]) We may here state that in Allahabad and Oudh R. 3 has been amended to the effect that the Court may proceed to decide the suit on the merits whether such party is present or not. In *Jhanda Singh* v. *Sadiq Muhammad*[17] Mr. Abdul Raoof, J., states "that the evidence on behalf of both parties had been given and the case being complete the Court was not bound to hear a separate argument for the purpose of deciding the suit." His Lordship's observations may apply where the strict procedure of the counsel's opening the case and letting in his evidence obtains. Even then the party who first opened the case has his right of reply. That observation cannot apply to the moffusil Courts in this Presidency where the system of opening the case is rarely followed.

It does not appear from the report of the judgment under notice, if the defendant moved for adjournment to engage a fresh vakil, if necessary, or the remark that he should engage another pleader emanated from the Court. Default of appearance in cases where the adjournment was not at his instance but to suit the convenience of the Court or both the parties does not fall under R. 3. (See *Doorga Dutt Singh* v. *Bunwaree Lall Sahoo*[21], *E. Mylne* v. *T. Koir*[22] *Enatulla Basunia* v. *Jiban Mohan Roy*[9] and *Sreemutty Toolsy Money Dassee* v. *Sreemutty Prosad Dassee.*[23]) But it is open to doubt if as *Murlidhar* v. *Dunichand*[24] would seem to suggest, it is not enough that the adjournment was at his instance but that the ground of the adjournment put by him should be the performance of one or other of the acts mentioned in R. 3.

The case under notice seems to take it for granted that if the circumstances were such that the Court ought to have acted under R. 2, then even though the Court in fact acted under R. 3, the party had a right to apply under O. 9. The proposition is not so obvious. If, in fact, the Court proceeded under O. 9, R. 6, in substance, it will be an order under O. 17, R. 2. It may be that where the judgment or order is ambiguous, then the Court may be assumed to have acted in conformity with the provisions of law. This principle has been applied

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9 (1914) I.L.R. 41 C. 956
12. (1922) I.L.R. 46 B. 1026.
17. (1923) I.L.R. 5 Lah. 218
21. (1872) 19 W.R. 34
22. (1928) I.L.R. 6 Rang. 325.
23. (1898) 2 C.W.N. 490.
24. A.I.R. 1923 Lah. 281.

even where the office drew up an order or decree and thereby misled the party. (See *Kallu* v. *Lokmal Das*[25], *Nasarat Khan* v. *Manulla*[26] and *Mittadar Venkoba Royar* v. *Mittadar Kadirappa Goundar*.[27]) But where the substance of the judgment clearly shows that the Court acted under a particular rule, it will be difficult to distinguish it from the cases holding that if the rule under which the Court acts is specified, then the party must adopt the remedies applicable to that rule (*Madho Dass* v. *Maharajah of Benares*[28] *Gaura Bibi* v. *Ghasita*[29], *Ganga Ram* v. *Chhidu Singh*[30], *Raghubir Dayal* v. *Puran Singh*[31] and *Chenroyan* v. *Rama Chetty*[32]) and press the Appellate Court to rectify the error. The question has arisen under other provisions also where the Court passed orders purporting to act under a particular provision of law, though in fact it had no power to act under that rule. It has been held that such usurpation of jurisdiction rendered the orders as validly passed under the section for purposes of the remedies which the aggrieved party has to adopt. (See *Abdul Rahiman Saheb* v. *Ganapathi Bhatta*,[33] *Latchmanan Chetty* v. *Ramanathan Chetty*[34] and *Muthiah Chettiar* v. *Govinddoss Krishnadoss*.[35]) In *Namperumal Naidu* v. *Alwar Naidu*[36] the question was raised but as the Trial Judge had not stated the provision of law under which he dismissed, the point was not answered. Curgenven, J., inclined to the view that the right course is to look rather to the circumstances in which a judgment of dismissal was passed rather than to its form, to decide under which of the two rules it should be held to fall. In some cases (see *Rukam* v. *Tara Chand*[37], *Ram Adhin* v. *Ram Bharose*[6], *Murlidhar* v. *Dunichand*[24] and *Brij Chandra* v. *Subhadra Kunwar*[38]) it was held that the party must have the benefit of the proper procedure and that therefore though the Judge may state one thing, the party was entitled to pursue the remedy open for the provision which the Court ought to have followed. Kumaraswami Sastri, J., says at page 292 in *Pichamma* v. *Sreeramulu*[5], that the dismissal of the suit or the passing of a decree being on the merits, the

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5 (1917) I.L.R. 41 M. 286: 34 M.L.J. 24 (F.B.).
6. (1924) I.L.R. 47 A. 181.
24. A.I.R. 1923 Lah 281.
25. A.I.R. 1927 A. 507.
26 (1916) 32 I.C. 766 (C.).
27. (1914) M.W.N. 344.
28 A.I.R. 1925 A. 252.
29. (1911) I.L.R. 34 A. 123.
30. (1912) 9 A.L.J. 763
31. A.I.R. 1929 A. 432,
32 (1916) 3 L.W. 524.
33. (1900) I.L.R. 23 M 517: 10 M.L.J. 305.
34. (1904) I.L.R. 28 M. 127: 14 M.L.J. 436.
35 (1921) I.L.R. 44 M. 919: 41 M.L.J. 316.
36. A.I.R. 1928 M. 831.
37. (1922) 20 A.L.J. 123.
38. (1926) 95 I.C. 798.

only remedy of the party aggrieved will be by appeal or review. But the order in that case seems to have been passed under R. 3 (*see* the argument at p. 289) and yet the petition to restore appears to have been accepted. No doubt the original judgment seems to have been silent as to the provision under which it was passed. In *Chandanam* v. *P. Samsugany*[39] the order was made on the merits, but the petition to restore was allowed, and *Sukkhu Koeri* v. *Ram Lotan Koeri*[40] was distinguished as a case where the section under which the order was passed was stated. In *Maharaja of Vizianagaram* v. *Lingam Krishna Bhupati*[41] the High Court interfered in revision and set aside a dismissal under section 102 on the ground that it was not present to the Trial Judge that section 157 applied and that under it he was not bound to dismiss a suit but could have passed some other order. The reasoning can well be applied to a case where the grievance is that the Court should have acted under one rule rather than under the other. (See also *Adinarayana Chetty* v. *Narasimha Chetty*.[42]) Even then the question will remain as to the propriety of interference in revision in cases where the Judge notices the two rules and acts under one rather than under the other.

CORRESPONDENCE.

Apropos the decision in *P. R. Das* v. *Chief Justice and Judges of the Patna High Court*,* Mr. R. Krishnaswami Aiyangar, Advocate, Cuddalore, writes:

Their Lordships of the Privy Council in disposing of the above appeal which raised a question of considerable importance to the legal profession in India have made certain interesting observations which require respectful attention.

They observe: (1) They do not propose to pronounce any opinion upon the contention that as immediately before the Act came into force the appellant was a Judge, he was not a person who as Advocate was entitled as of right to practise in the High Court on that date. (2) Their Lordships refrain from expressing any opinion upon the important question as to the propriety of an *ex*-Judge practising in the Courts of the Province where he has exercised judicial functions. The first point obviously raises questions of importance as to the position of Advocate

39. (1928) I.L.R. 6 R. 766
40. (1919) I.L R. 41 A. 663 41 (1902) 12 M.L.J. 473.
42 (1931) 60 M.L.J. 167
* (1930) 60 M.L.J. 179 (P.C.).

and Judge in India, whether a Judge on appointment ceases to hold the qualification of Advocate, and if so how, if at all, on ceasing to be a Judge he may resume the position of an Advocate.

It seems to me that his qualification continues despite his appointment and that on ceasing to be a Judge he might resume the position of an Advocate. Right to practise is quite a different thing from actual practice. A person who suspends his practice for a time or who is ill and therefore cannot attend to his work is still a person who is entitled to practise. Non-user or non-exercise of a right does not destroy the right itself. During the time he holds an appointment, the practice is merely suspended or out of use as in the case of voluntary suspension or illness or may I say, as when no client resorts to an advocate. Moreover, it is only a qualification for an office, the holding of which cannot be said to wash away its foundation, *viz.*, the qualification. If the qualification ceases by reason of the appointment, will it not affect the office? For example, suppose something happens which would destroy the character of an advocate, can he still hold the office? The qualification would seem to be continuous and unimpaired by the appointment. It automatically revives when the cause of non-exercise ceases.

As to the second, it is at best only, a matter of etiquette and purity of the profession. I have heard it said that the holding of an acting appointment is not regarded as an impediment but that the holding of a permanent appointment should be so regarded. I fail to see, the reason for the difference. An advocate who reverts to the Bar, having held an appointment, temporary or permanent, is to all intents and purposes equally regarded by all concerned. The question arises, should such people be permitted to practise at all? Lawyers and Judges are so trained by tradition and equipment that nothing untoward will happen if *ex*-Judges are permitted to practise. Such cases are indeed very rare and there is no conceivable reason why any rule or convention should be built up against the privilege. Of course, a ban may have a commercial value in that it prevents work accumulating in such an office with the consequent advantage of that work being distributed among the rest. But on principle there can be no question of impropriety at all. There is little possibility of their securing any unfair advantage by reason of that circumstance. Judicial officers any day certainly rise above any delicate situation suggested to arise. The client population may entertain strange notions but that is not the true criterion.

SUMMARY OF ENGLISH CASES.

In re MOYNIHAM. *Ex parte* TRUSTEE, (1930) 2 Ch. 356.

Practice—Procedure—Evidence for petitioner—Judge holding prima facie *case established—Adjourned to enable the respondent to appeal so far—If proper.*

A debtor *M* was adjudicated a bankrupt and the trustee in bankruptcy thereafter moved the County Court for a declaration that certain documents executed by the bankrupt *M* were fraudulent preferences and void against the trustee in bankruptcy The respondents urged that the evidence let in by the trustee disclosed no *prima facie* case but the judge decided otherwise and ordered the defence to proceed. But as the respondent's counsel desired to appeal against the ruling, reserving to himself liberty to let in evidence if the appellate court should also hold the evidence sufficient to establish a *prima facie* case the judge adjourned the case for the purpose. *Held* this procedure is irregular. Once the judge has ruled that there is a case for the defendant to answer, he should not suspend proceedings in order to enable the defendant to file an appeal against his ruling. The right course is for the whole matter to be completed before the County Court Judge.

In re JOEL'S LEASE. BERWICK *v.* BAIRD, (1930) 2 Ch. 359: 99 L.J.Ch. 529.

Landlord and tenant—Lease of Stud-farm—Agricultural holding—Meaning of—Agricultural Holdings Act, 1923.

Where certain premises were laid out for a stud-farm for the breeding of either race horses or pedigree horses of some kind, it cannot be said to be a holding of an agricultural character. It may be so where the farm is used for the breeding of cattle, etc. The fact that there are in most, though not in all, of the fields in question certain plots of grass or certain portions of pasture land, does not establish the proposition that the holding is 'wholly pastoral,' where the main purpose of the letting was a stud-farm for the breeding of race horses. 'Stud-farm' means a farm in which stallions and mares are kept for breeding.

THE WILLIAM THOMAS SHIPPING CO., *In re.* H. W. DILLON AND SONS, LTD. *v.* THE COMPANY, SIR ROBERT THOMAS, *In re,* (1930) 2 Ch. 368: 99 L J.Ch. 560.

Contempt of Court—Company—Appointment of Receiver at the instance of a debenture-holder—Publication of a statement by respondent in newspapers commenting on the plaintiff's action—Statements incorrect and misleading—If amounts to contempt of Court.

At the instance of the plaintiffs in a debenture-holder's action, a receiver was appointed by the Court, on the ground that the shipping Company was in a state of extreme jeopardy, unable to meet its debts or even pay the premiums for marine insurance. The respondent *T* was governing Director of R.J.T. & Co., who had been managers of the steamships belonging to the Company. To explain his position, he sent a statement to the newspapers but therein adversely commented on the conduct of the plaintiff in having obtained the appointment of the receiver. He did not state in it that the order was made on the ground of jeopardy.

Held, that to amount to contempt of Court, it is not necessary that the conduct should be such as is likely to influence the Judge's mind. It is a contempt of Court to abuse the parties concerned in a pending cause or matter by injurious misrepresentations, especially when they tend to hold up that party to hatred or contempt. It is liable to affect the course of justice, because it may, in the case of a plaintiff, cause him to discontinue the action from fear of public dislike, or it may cause the defendant to come to a compromise which he otherwise would not come to. Especially is it so, in the case of a representative action, like the debenture-holder's action.

WILLIAMS, *In re.* RICHARDS *v.* WILLIAMS, (1930) 2 Ch. 378: 99 L.J.Ch. 476.

Administration—Estate insolvent—Administrator's right to prefer creditors—Equitable assignment of future proceeds—Whether effective preference.

An administratrix of an estate, believing the estate to be solvent, asked the auctioneers to pay 300*l.* to G and 829*l.* to P (two creditors of the estate who pressed for payment) out of the sale proceeds from the estate. The sale finally procured only 942*l.* and there were other creditors to be paid. The question was if *G* and *P* were entitled to preference over the other creditors,

Held, that the administratrix could prefer one creditor to another and that right is preserved by S. 34 (2) of the Administration of Estates Act, 1925. That right may be exercised

by actual payment or by giving a legal charge on money actually in anybody's hand or even by creating equitable assignments of future moneys to come into the hands of herself or her agents.

Quaere.—What would have happened if there had been nothing more than an agreement to pay?

In re JACKSON, MIDLAND BANK EXECUTOR AND TRUSTEE CO., LTD. *v.* ARCHBISHOP OF WALES, (1930) 2 Ch. 389: 99 L.J.Ch. 450.

Will—Construction—Charitable gift—Gift to the Archbishop for the time being of Wales, to be applied by him in or towards the Church fund "or in his discretion in any manner which he might think best for helping to carry on the work of the Church of Wales"—Uncertainty of the alternative gift—Validity of gift.

Where a testatrix by her will devised a moiety of her residuary estate to the "Archbishop for the time being of Wales, to be paid and applied by him in or towards the General fund belonging to that church or in his discretion in any manner which he might think best for helping to carry on the work of the Church of Wales."

Held, the bequest was void for indefiniteness. No doubt the testatrix contemplated that the Archbishop will deal with it in one way or the other for a charitable purpose but the discretion was too wide and enabled the Archbishop to use the fund for purposes which are not charitable and there was nothing to prevent him from using for other than charitable purposes.

Dunne v. *Byrne,* 1912 A. C. 407 applied.

JACQUES SETTLED ESTATES, *In re,* (1930) 2 Ch. 418: 99 L.J.Ch 534.

Settled Land Act—Electric installation by tenant put up prior to 1925—Act giving a right to reimbursement out of capital—If retrospective—Claim by tenant for expenses incurred prior to Act, if valid.

In 1919, at a time when it could not be paid for out of capital, a tenant for life of settled estates installed on the premises electric lights and paid for it out of his own money without any expectation of any relief being afforded to him in respect thereof. After the passing of the Act of 1925, the tenant asked the Court to authorise the trustees of the settlement to apply out of capital moneys the sum spent by him for the

installation, such sum to be repaid to them out of the income of the settled land in 15 years in half yearly instalments.

Held, that the provisions of the Act were retrospective; that having regard to the fact that the expenditure is meritorious, that sooner or later and sooner rather than later there must have been an installation of electricity, and had it been made after 1925 it would have been sanctioned under S. 84, sub-sec. 2 (*a*), the order asked for should be made, repayment to be in 20 half yearly instalments.

In re *Ormrod's Settled Estate,* (1892) 2 Ch. 318, referred to and distinguished.

ELDER *v.* NORTHCOTT, (1930) 2 Ch. 422: 99 L.J.Ch. 548.

Limitation—Statute of—Claim barred as to principal—If interest accrued before the date of the principal also barred—Limits of the doctrine "interest accessory to principal".

N lent to the defendant a sum of 1500*l.*, the loan to bear interest at 5 per cent. per annum. The claim as to principal became barred on June 30, 1926, six years from the last payment of interest on June 30, 1920, but interest was claimed for the period between November 1, 1922 and June 30, 1926 (six years before the suit and the date when the principal was barred). The contention was that as each half yearly day for payment came, a cause of action accrued to the plaintiffs and accordingly, that they were entitled to claim interest not going further back than November 1, 1922, on the footing that every half year a claim for interest arose, that claim arising within six years before the issue of the writ, subject to this that interest could not be claimed after the date at which the principal money ceased to be recoverable by action.

Held, that the principal sum having been barred by the statute and the interest being claimed only as accessory to the principal and not on foot of any separate independent covenant for interest, the claim for interest accrued thereunder was also barred with the principal.

Hollis v. *Palmer,* 2 Bing. N. C. 713: 5 L.J.C.P. 264 and *Cheaug Thye Phin* v. *Lam King Sang,* 1929 A.C. 670 followed.

Dubitante.—Whether the mere existence of two separate covenants one as to principal and one as to interest would make any difference.

INLAND REVENUE COMMISSIONERS *v.* DALGETY & CO., LTD., (1930) A.C. 527.

Income-tax—Company incorporated in England—Business in the United Kingdom and Dominions—Income-tax on the debenture interest deducted by the company—Payment of income-tax in the Dominions how far relievable—Finance Act, S. 27, sub-sec. (1).

A company incorporated in England was carrying on business both in the United Kingdom and in New Zealand and Australia. Its income chiefly arose from operations in the latter two Dominions. For the years in question, the company paid the full United Kingdom income-tax on all their profits and gains and also the Dominion's taxes on so much as was earned within the Dominion's jurisdiction. The company had issued debentures charging its total assets with repayment of it and in paying interest thereon had deducted the full amount of United Kingdom Income-tax Act. The question was if it can obtain relief under S. 27 in respect of income-tax paid in the Dominions on the amount of all the profits and gains that have paid double tax, or only on the residue after deduction of the debenture interest properly payable out of the profits that are doubly taxed.

Held, that the company was entitled to relief in respect of all income on which Dominion Tax had been paid If there had been no debentures the claim for relief could not have been resisted and the existence of the debentures cannot limit the company's rights and give greater rights to the Crown. It is only the application of the income that has caused the difficulty and with this the taxing authority has no direct concern. The present case is not concerned with any claims by debenture-holders. "Paid" means "paid" and not "paid and ultimately borne".

Per *Lord Buckmaster*—A case where the debentures create no security is less favourable to the Crown.

WHITLEY *v.* STUMBLES, (1930) A.C. 544.

Landlord and tenant—Landlord and Tenant Act, 1927—*Business premises—Demise of hotel with exclusive fishing rights—Goodwill—New tenancy whether should include fishing rights.*

By an indenture, the appellant demised to the respondents a hotel together with the exclusive right of fishing within limits described in the lease. On expiry of the lease, the lessee applied for a renewal and the referee reported that goodwill beyond

that attributable to the premises had attached to the premises by reason of the trade carried on by the respondent and that any compensation would not be adequate The question was if the lease of "premises" included also incorporeal rights, like fishing,

Held, that in strict conveyancing language the word "premises" is used as meaning the subject-matter of the habendum in a lease. In some earlier sections of the Act, there are indications that the legislature was considering primarily physical premises, such as buildings. But it is clear that it includes some incorporeal hereditaments, like easements. There is no sufficient reason to suppose that the legislature did not include not merely the actual buildings in which a trade is carried on, but also the land surrounding them, the easement granted as appurtenant to them, and any other incorporeal hereditaments which may form part of the premises in the strict legal sense of the term which are the subject-matter of the habendum.

MINTER *v.* PRIEST, (1930) A.C. 558.

Defamation—Solicitor—Defamatory statements made by the solicitor to his client about the plaintiff—Solicitor not finally engaged by the client—Privilege, limits of.

At an interview between the defendant, a solicitor, and two gentlemen, *T* and *S*, who had gone to interview him with a view to procuring a loan for the purpose of a deposit on a purchase by *S* from the plaintiff of a house, the solicitor uttered the words complained of to *S* and *T* about the plaintiff. If the money were found, the respondent was then to act as their solicitor in the transaction. The question was if the slander is privileged if the contemplated relationship was that of solicitor and client and not mere lender and borrower.

Held, if a man goes to a solicitor, as a solicitor, then, though he may not eventually be engaged, the interview is a privileged occasion. The relationship of solicitor and client being once established, it is not a necessary conclusion that whatever conversation ensued was protected from disclosure. The conversation to secure this privilege must be such as, within a very wide and generous ambit of interpretation, may be fairly referable to the relationship, but outside that boundary the mere fact that a person speaking is a solicitor, and the person to whom he speaks is his client affords no protection." Where it is clear that the solicitor was not using the occasion honestly for the purpose of serving the client but to make a profit for him-

self out of the transaction, the statements are not privileged. Whether an occasion is privileged or not is for a Judge to decide and not for the Jury, and it is only after the Judge has ruled that it is privileged, could he put the question of express malice to destroy the privilege to the jury.

The question based on *More* v. *Weaver,* (1928) 2 K.B. 520, namely, whether if the privilege be established, the solicitor would be protected by such privilege, notwithstanding subsequent waiver by the client left open.

BOWIE OR RAMSAY *v.* LIVERPOOL ROYAL INFIRMARY, (1930) A.C. 588: 99 L.J.P.C. 134.

International Law—Domicil—Prolonged and continued residence in England—Domicil of origin Glasgow—Absence of evidence of an animus to change the domicil—If sufficient to change domicil.

A person born in Glasgow and of Scottish domicil left Glasgow and settled with his brothers, sisters and mother at Liverpool for the last 35 years of his life and died there. He was living on the bounty of his brother. He never visited Scotland, not even for his mother's funerals. On the death of his sister he succeeded to his sister's estate and lived on it. Except the family ties, he had few other ties in England or Scotland. He left a holograph will unattested, valid under Scotch but void under English Law and in the will he referred to himself as a Glasgow man. He never seemed to have had or exercised any volition of his own except a disinclination to move.

Held, that though continued residence may in certain circumstances show that the domicil is changed though such intention did not originally exist, yet an intention to change is necessary to be proved and it cannot be inferred from an attitude of indifference or a disinclination to move. Length of residence by itself is insufficient evidence from which to infer the animus to change the domicil; but the quality of the residence may afford the necessary inference.

M'CAFFERTY *v.* MACANDREWS & CO. LTD., (1930) A.C. 599.

Appeal—Workmen's Compensation Act—Common law action for damages—Dismissal of action but compensation assessed—Claim made within six months of the accident—Action whether should be brought also within six months—Appeal, if lies from an order of common law Court assessing compensation.

A workman met with an accident on the 12th September and made a claim for compensation on the 17th February, *i.e.*, within six months. In March he commenced a common law action for damages founding on the negligence of the respondents. The action was dismissed but on application being made for it, the Court proceeded to assess compensation under S. 29 of the Workmen's Compensation Act, 1925. The Court made an award of compensation and issued a certificate of the award. On appeal it was set aside. The question was if the appeal was competent.

Held, that an appeal lies from an order in the common law action assessing the compensation payable as if it were a decree of that Court under S. 29 but on that appeal the criterion is the same as when proceedings for arbitration are taken by the Sheriff in the ordinary way. The determination is final as to fact and is only open to review as to law. Provided the claim is made within six months and notice of the accident also given as soon as possible, further proceedings become maintainable and continue maintainable till put an end to. When once in the common law action, motion is made under S. 29, the claim is within time.

Cribb v. *Kynoch, Ltd.,* (1908) 2 K.B. 551, distinguished as a case where no application was made in the action to act under S. 29.

Per *Lord Buckmaster.*—"Rights of appeal are not inherent rights—they are attached by statute to certain Courts exercising certain jurisdiction, but if a totally new jurisdiction is established it carries with it no right of appeal unless it arises through the jurisdiction being conferred on existing Courts so as to make the new matter subject to the already existing rights of appeal."

W. R. PATTON *v.* TORONTO GENERAL TRUSTS CORPORATION, (1930) A.C. 629: 99 L.J.P.C. 213.

Will—Construction—Annuity conditional upon annuitant adopting a religion—Annuitant an infant at the date of death—Change of religion permitted in law only after majority—Result of on the annuity.

In 1917, a testator bequeathed to his grandson an annuity for the term of his natural life, on the condition, "that he is and remains a British subject, and is and proves himself to be of Lutheran religion". At the date of the will the annuitant was an infant twelve years old and in the control of his mother who was, to the knowledge of the testator, a Roman Catholic. According to the German law to which the parties were subject,

a person cannot effectively change his religion without the consent of his parents during his minority. The testator died in 1919 while the annuitant was still an infant. On attaining majority he proved himself to be a Lutheran and the question was whether he was entitled to the annuities.

Held, that it is obligatory upon a Court of construction to ascertain whether, construed in association with the surrounding circumstances known to the testator, the words used are not capable of a more rational interpretation. If its strict literal construction is its true construction, that the testator intended the boy to be of the Lutheran religion then, he imposes upon the annuitant a condition impossible of performance. But the testator has given him an opportunity of proving that he is of the Lutheran religion; and that opportunity, if it is to be operative at all, must be operative at some date later than that which is in literal terms prescribed and that is when, in the eye of the Court, he is in a position truly to determine what his religion is, namely, his majority. Any other construction would involve this that these provisions were, to the knowledge of the testator, struck with sterility as soon as they were written.

SAKARIYAWO OSHODI *v.* MORIAMO DAKOLO, (1930) A.C. 667: 99 L.J.P.C. 233.

Land acquisition—Nigeria—Native lands in Lagos—Acquisition of, by Government—Compensation if payable to the Chief also for his right of reversion.

In the native lands of Lagos, the paramount Chief is the owner of the land, but he is not owner in the sense in which it is understood here. He has no fee simple, but only a usufructuary title. He may have some individual lands which he occupies himself, but as regards other lands they were occupied before the abolition of slavery by his slaves. These occupiers have the right to remain and to transmit their holdings to their offspring, but in the event of the family of an occupier failing and becoming extinct, the Chief has a right of reversion. He has no present rights to rent or anything.

Held, that the occupants were entitled to the compensation awarded. But the appellant—Chief—was also entitled to receive a portion of it as representing his reversion. In view of the fact that he has no rights which he can at present exercise by receipt of rents or otherwise, the value of the reversion may be small but it cannot be evaluated as *nil.*

Amodu Tijani's case, (1921) 2 A.C. 399, distinguished.

GILMOUR *v.* MACPHILLAMY, (1930) A.C. 712: 99 L.J. P.C. 199.

Will—Construction—Meaning of 'survivors' in "shall be equally divided amongst the survivors"—Literal or stirpital meaning.

By his Will a testator directed that the income from the rest and residue of his estate shall be held by trustees to pay the income therefrom to the whole of his children (names given) in equal shares for their respective natural lives and after the decease of the said children in a particular way: "provided however that if *any* of my said children shall die without leaving lawful issue or widow or widower living, the shares or share of the said child so dying shall be equally divided amongst the *survivors upon the same trusts and conditions.*" The testator died leaving nine children. In 1924 a son *H* and in 1927 a daughter *E* died a bachelor and spinster respectively. They were survived by two brothers and the children of the other children of the testator. The question arose as to the destination of the shares of *H* and *E*, whether surviving brothers alone took to the exclusion of the grandchildren by deceased children of the testator.

Held, that the clause could only be read as meaning "shall be equally divided amongst the survivors so that each survivor takes a life-interest with remainder to his children as in the case of his or her original share." In order to justify a departure from the natural and ordinary meaning of any word or phrase there must be found in the document itself a context which necessitates such departure. It is not enough that the natural meaning may produce results which to some minds appear capricious or fail to accord with a logical scheme of disposition.

LOVIBOND *v.* GOVERNOR-GENERAL OF CANADA, (1930) A.C. 717: 99 L.J.P.C. 178.

Appeal—Canada—Petition of Right—Refusal of fiat by Governor-General—Special leave to appeal to Privy Council—Governor-General if a 'Judicial Officer' in the matter of granting or refusing fiats.

By S. 4 of the Petition of Right Act (R. S. Can. 1927, c. 158) "A Petition of Right shall be left with the Secretary of State for Canada, for submission to the Governor-General, so that he may consider it and, if he thinks fit, grant his fiat that right be done. . . . ."

Held, that the Governor-General in deciding whether to grant or not a fiat under S. 4 of the Petition of Right Act of Canada, does not act "as a Judicial Officer" within the meaning of S. 3 of the Judicial Committee Act, 1833, and therefore there is no right to appeal to His Majesty in Council.

COLISEUM (BARROW), LTD., *In re.,* 99 L.J.Ch. 423.

Statute of Limitations—Company—Debt due to directors—Acknowledgment only in the annual balance sheets—Balance sheets signed by the Directors and passed at shareholder's meetings—If sufficient acknowledgment to save limitation.

As the Company made trading losses during several years, the Directors made cash advances to it, and also allowed their remuneration to stand over and to remain a debt due to them from the Company. The last payment to the Directors from the Company was in 1919 but every year, the debt was mentioned in the annual balance sheets of the Company which is signed by two of the directors and passed at the annual general meetings of the share-holders. The Company was ordered to be wound up in 1929 and the liquidator rejected the proof of the directors in respect of sums owing to them beyond six years from the date of the winding up, as barred.

Held, that an acknowledgment to be effective must be made to the creditor or to his agent. Had the statement been made in the balance sheet that the company owed a specified sum to a share-holder to whom the balance sheet was sent in the usual way, it would be a sufficient acknowledgment within the authorities. But here the promise, if any, is a promise by the Directors, as a board acting on behalf of the Company, to pay to themselves the amount, and that is not, in the circumstances, a promise to pay on behalf of the Company. The Directors, as agents of the Company, hold a fiduciary position and they cannot pass a resolution authorising payment to themselves, so as to bind the Company.

FUEL ECONOMY CO. *v.* MURRAY, 99 L.J.Ch. 456.

Practice and procedure—Action for infringement and passing off of patent—Defence of invalidity, how far open—Estoppel between licensor and licensee, limits of—Motion to strike off the defence of invalidity—O. 19, R. 27 (R.S.C.).

The plaintiff company were the legal owners of a patent to manufacture boilers and boiler joints under the name and

style of "Bowden Jackson." They granted an exclusive license to *C* to use the said letters patent for a term within a certain area. The defendant *M* obtained by purchase that right from *C*. In an action for an infringement and passing off, the defendant among other pleas stated that the letters patent was invalid for certain reasons and further that at the date of the said patent, the apparatus complained of was not novel. An application was taken out by the plaintiff to have these two defences struck out on the ground that as the defendant admits that he is a licensee, he is estopped from denying the validity of the letters patent. The defendant only admitted that he was the licensee *within the limited area* specified in the license but the particulars of breaches relied on were in respect of matters *outside* the area defined in the license.

Held, by the Court of Appeal (affirming Luxmoore, J.) that there is not an absolute estoppel in all cases and in all circumstances on the part of the licensee under which he is prevented from at any time and under any circumstances saying that the patent is invalid, but only an estoppel which is involved in and necessary to the exercise of the license which the licensee has accepted. A licensee is not precluded from discussing the exact extent and boundaries of the patent rights of his licensor, for this is not to dispute the existence or validity of such rights. whatever they are, which is all that he is estopped from controverting.

Per *Luxmoore, J.*—"An action for infringement is not an action under the license at all, and in such a case no estoppel arises. In the present case, so far as the infringement complained of is concerned, the license has no bearing on the case and is irrelevant. It is only referred to in order to explain the limitation which has been placed on the relief sought by excluding the area covered by the license from that relief. The action does not relate to anything which has been done under the license and the defence does not set up the license as an answer to the claim for infringement.

JOTTINGS AND CUTTINGS.

The Close of the Round Table Conference.—The Round Table Conference on India, which met last November, was brought to an end on Monday by a statement by the Prime Minister as to the lines on which efforts would be made to carry out its recommendations. During the deliberations of the Conference nothing has been more marked than the rapid

acceptance of the principle of an All-India Federation. Only faintly suggested by the Report of the Statutory Commission as a matter desirable indeed, but outside their province, it has become the basis of any constructive work that may hereafter come to fruition. This, said the Prime Minister, is due to the attitude adopted by the Indian Princes. "You showed," he said, "your patriotic interest in Indian affairs and your very wise vision regarding the future, and your words made it possible for us to build up a constitution, and to put political weight upon it, of the nature of an All-India Federation." It has been the task of a Sub-Committee, working under the Lord Chancellor, to outline the nature and powers of the Federation and its relation to the Crown, but by general agreement it cannot at once assume the full responsibilities of Government, and the Prime Minister stated the essential safeguards: reserved powers to be used in the event of a breakdown in the ordinary operation of Government; safeguards for the financial and other responsibilities which Great Britain has assumed on behalf of India; and safeguards for the respective rights of the two great communities of Hindus and Moslems.—*L.J.*, 1931, p. 55.

The Embryo Constitution.—It is, as is well-known, this last matter—the rivalries of Hindus and Moslems—which has raised most difficulty during the discussions in the Conference, and which at one time threatened to forbid any useful result. How the claims of the two diverse races are to be reconciled has not been determined, and such progress as the Conference has made has been due to the holding over of this fundamental question. In fact the Prime Minister, expressing the considered view of the British Government, says that it is the duty of the communities to come to an agreement among themselves. This means that they must agree as to their proportions of political representation; and also it must be secured that differences of religion, race, sect or caste shall not in themselves constitute civic disabilities. On this basis, if the scheme now foreshadowed is carried out, there will be a two-chamber Legislature for the Federation, and, subject to the reserved powers of the Viceroy, there will be a cabinet consisting of a Federal Prime Minister and his colleagues, all responsible to the Federal Legislature. For British India there will be Provincial Legislatures on similar lines. The position of the Indian States is peculiar, and the extent to which they surrender their rights has still to be determined. At present they are sovereign, subject to the Paramountcy of the Crown. "The Federal Government," said

the Prime Minister, "will have authority only in such matters concerning the states as will be ceded by their rulers in agreement made by them on entering the Federation:

"The connection of the States with the Federation will remain subject to the basic principle that, in regard to all matters not ceded by them to the Federation, their relations will be with the Crown acting through the Viceroy."

Although the Conference has not produced a definite constitution such as that which issued from the American Convention of 1787, and on which the United States have built their present position in the world, yet it is comparable with that Convention, and it may be hoped that the foundations have been surely laid for the All-India Federation of the future.—*L.J.*, 1931, p. 55.

Lawyers and Reforms.—It was Sir John Withers, I believe, who in July last said some hard and provocative things about the conservatism of his branch of the profession, in a different matter, which aroused great controversy at the time. "The members of the profession," he declared, "eager as they no doubt are to do the best, are so habitually critical of every proposal that they cannot collectively initiate any constructive policy."

Amidst the chaff of that sweeping assertion you will find a grain of truth. But it is surely right that lawyers of all people should examine the new thing with the greatest care before they discard in its favour the old and the tried; that they should have a good look at the new horse before they give away the old.

"Toujours l'audace" for lawyers is an indecent and undesirable watchword; and I conceive that even the liveliest judge would think once, twice, nay, thrice before decreeing that even a thousand of our 100,000 decided cases should be shot at dawn and interred in the legal graveyard. He may treat a couple of thousand as if they were dead; but that is different; for he can on occasion treat them as survivors.—*L.J.*, 1931, p. 67.

Innocent in Absentia.—A recent incident caused me to wonder whether, in the event of counsel failing to appear when his case is called on in Court, the worst should be assumed against him, and contempt of Court inferred. Personally, I should have thought that he ought, as a citizen, if not as a member of the Bar, to be assumed to be innocent until he is found to be guilty. He may have been run over in the street;

sudden illness may have prevented him; his instructions may have been withdrawn; one or more of many things may have occurred. I would assume much, until I had heard his explanation, before jumping to the conclusion that he had intended to affront the Court or that he was guilty of a neglect of duty.

Members of the Bar or Solicitors, to say nothing of their clients, have waited with me in Courts where, owing to unavoidable delay, the Judge arrived long after the appointed time; and always we have assumed that the cause of the delay was unavoidable and that the Judge deserved our sympathy rather than condemnation; and always, or nearly always, he has arrived with a courteous apology and explanation to the waiting crowd. Full often we were losers by the delay; but nice people that we were, we always, or nearly always, understood, and thought no evil.—*L.J.*, 1931, p. 67.

Cost of Litigation.—At the Annual General Meeting of the Bar on Friday last the members were no more vocal than usual. From both the Attorney-General and the Chairman of the Council, however, there were the expected references to the cost of litigation, which the latter described as "a very serious matter." It will be remembered that the Council were represented when Lord Sankey received the deputation from the London Chamber of Commerce some little time ago and that, as stated in the report, it appointed a special committee to review its proposals. Sir William Jowitt on Friday assured his auditors that the matter was under consideration and held out hopes that by next year something might be done. Sir Thomas Hughes later evoked approval from the meeting when he said that a reduction of costs would be to the advantage of both Bar and public, and he made frank admission of what is, of course, common knowledge in each branch of the Profession, that in smaller matters of litigation costs could easily exceed the amount at issue and thus inevitably deter many persons from resort to the courts to defend their rights. For some of the changes advocated by the Chamber of Commerce facilities already, of course, exist of which insufficient use is made, as was pointed out in this journal at the time; other suggestions may, as Sir Thomas Hughes hinted, not be practicable; but a report of the Bar Council will at least take the matter a good step further forward. The disproportion between costs and subject-matter in humble suits was, of course, a chief cause at the root of the establishment of County Courts, but no one in practice to-day would argue that these courts can altogether

deny the impeachment of excessive cost. Were examples required, as they are not, they would be found in the fearless and highly interesting book of Mr. Claud Mullins on law reform just published.—*L.T.*, 1931, p. 69.

In Quest of Justice.—One of the chief accusations brought against our system in Mr. Mullins' book, of which more must be said later, is the enormous cost to individuals of judge-made law, or, in other words, the hardship inflicted on litigants the adjudication of whose possibly small claims chances all unknown to them to involve the settlement of a new principle of law. These unfortunates are, as Mr. Mullins shows *in extenso,* the victims of the system, being lured from one court to another at enormous expense, "for the mere purpose of law-making." The costs required to establish the principle of *Helby* v. *Mathews,* where the House of Lords restored the judgment of the County Court, must, it is suggested, have approached the value not of a piano but of a piano factory. When the question not of evils but of remedies is approached it is found that the recommendations of the Chamber of Commerce pale before the wholesale reforms suggested by a member of the Bar with some knowledge of the working of Continental codes. Suffice it here to say that they include provision for one appeal only and for the utilization of the displaced possessors of "legal brains of an absolutely first class order" for the supervision and improvement of our private law and methods of litigation, and the dedicating of the whole energies of Lord Chancellors to the inspiration and direction of law reform.—*L.T.*, 1931, p. 69.

The Alternative Vote.—The main purpose of the representation of the People Bill is to ensure that Parliamentary elections shall "be on the principle of the alternative vote," but its long title indicates that "in that connection" various other provisions are to be made. Some of these connected provisions have already found their places in the clauses of the Bill, but two of them—those relating to the expenses of speakers and the application of the funds of political organisations respectively—have yet to be inserted. With regard to the alternative vote, the rules are simple. Each elector is to have two votes, a "first preference" and an "alternative" vote. He may indicate the candidate who is his first choice and give him his preference vote by placing the figure 1 or the mark x opposite his name, and he may also place the figure 2 opposite the name of his

second choice and bestow on him his alternative vote. If a candidate receives an absolute majority of first preference votes he will be declared elected. If there is no such absolute majority, the candidate with the smallest number of first preference votes will be "excluded" and the alternative votes on the ballot papers counted to him will be transferred as first preference votes to those for whom they were cast. If there is still no absolute majority the process will be repeated and another candidate will be excluded. An alternative vote, after it has been transferred, is to be of the same value as a first preference vote, except that, if two candidates, one of whom has to be excluded, have an equal number of votes, the candidate who has the largest number of transferred votes will have to give place. -- *L.T.*, 1931, p. 70.

Proportional Representation.—The second of the rival schemes, Proportional Representation, endeavours to provide representation for the majority and for all substantial minorities in proportion to their strength throughout a country. The scheme naturally requires for its operation large electoral areas each returning a number of members, and in each such constituency the method of voting is the "single transferable vote." Each elector places the figure 1 against his first choice, 2 against his second, 3 against his third, and so on, but only one of his votes is effective. Suppose in a constituency returning five members there are 100,000 voters who record their votes. If a candidate obtains 20,000 first choice votes he can be sure of a seat, for not more than four candidates can each obtain as many as 20,000 first choice votes out of the balance of 80,000, and five candidates have to be elected. If in the above case five of the candidates each obtains 20,000 first choice votes, none of such votes being cast for any other candidates, perfect proportionate representation would be secured. But in all probability some candidates will obtain considerably more than the *quota* and some considerably less, and a process of transfer will in that case be required. The returning officer sorts the whole of the ballot papers of the leading candidate according to the names marked 2 thereon, and the votes such candidate does not require are divided among the second-choice candidates on his ballot papers in proportion to the number of 2's against the name of each on the whole of such papers. When all surplus votes have been thus transferred those candidates who have the lowest number of

votes are one by one excluded and their votes transferred until only the due number of candidates remain. They are declared elected, and, roughly speaking, proportionate representation is secured for all the really substantial parties engaged in the struggle.—*L.T.*, 1931, p. 70.

The German Civil Code.—This code, from which Mr. Goodhart declares, in his new volume of Essays in Jurisprudence and the Common Law, that sooner or later England will have to borrow the principle laid down in section 226, namely, that the exercise of a right which can have no purpose except the infliction of injury on another is unlawful, has now been in operation for thirty years and has been a great success. Like the Code Napoleon, it was called into existence in order to unify the law which till its promulgation varied in material respects in different parts of the Empire. "Broadly speaking," wrote Dr. Schuster in 1896, "it may be stated that out of a population of 42,500,000, 18,000,000 are governed by the Prussian Code, 14,000,000 by the German common law, which remains the modernised law of Justinian, 7,500,000 by French law, 2,500,000 by Saxon law, and 500,000 by Scandinavian law. There are therefore six general systems of law, but only two out of these are exclusive systems; the other systems are broken into by-laws and customs." Little wonder, therefore, that there was a real demand for one uniform system of law applicable through the whole empire. The same necessity for a code has not been felt in this country where local differences in customs have been few, at all events in modern times, although there may in the opinion of some be good grounds for a codification of English law for other reasons.

The German code was a long time in process of incubation. In 1848, a beginning was made by the enactment of a general law of bills of exchange; other portions of the law were from time to time codified, but it was not till 1874 that a commission was appointed to prepare a draft Civil Code, and it was not till 1887 that the commission submitted the result of its deliberations. Its draft continued a draft, and in 1891 another commission was appointed to reconsider the subject. This second commission was more expeditious, for it completed its work by June, 1895. On the basis of its draft a third was prepared by the Federal Council and submitted to the Reichstag in 1896, and after some amendment was passed into law, coming into operation on the 1st January, 1900. It was, as

one writer put it, the pressure of practical needs that gave the impulse to codification both in France and Germany, as well as in British India.—*L.T.*, 1931, p. 80.

BOOK REVIEWS.

THE LAW OF EVIDENCE APPLICABLE TO BRITISH INDIA, Ninth Edition, by Sir John Woodroffe and Ameer Ali, 1931. Price Rs. 28.

The treatise which has been looked upon as the leading commentary on the Indian Evidence Act almost since its appearance needs no introduction to the lawyer or the student. The main features of the work are already familiar and we have therefore only to notice that Sir John Woodroffe has brought it up to date by bringing out the ninth edition. As is well known, Woodroffe and Ameer Ali's Law of Evidence has met the wants both of the students of law and the members of the profession by reason of its valuable introductions and learned commentaries. The absence of over-citation in the body of the work of cases which according to the learned author were reported more with a view "to find grist for the mills of the numerous Indian journals" than by reason of the points laid down by them calling for their being reported, does not by any means detract from the merit of the book. It may perhaps be not out of place to mention that occasionally the latest legislative changes are not noticed as at page 552 where the learned author has not noticed the effect of the amendment by Act XXXVII of 1926 by which after the 1st of January, 1927, *all* wills and codicils made by any Hindu, Buddhist, Sikh or Jain have to be executed in conformity with the provisions of section 63 of the Succession Act of 1925 and not merely those referred to by the learned author oftentimes, it is a familiar criticism that there are misprints in Indian publications which are believed to be absent in English legal publications. We should expect such leading legal text-books like the one under review to be free from misprints, though the author can hardly be blamed for them. We regret to find that the volume under review is not altogether free from them. For instance at page 711 we find more than one reference being made to the points laid down in *Ram* v. *Mahomed*, 23 C. 227; we are unable to trace the case in the reports either by reference to its name or page. Such mistakes are perhaps inevitable in a huge work of this kind. We have every reason to believe that this edition of the book will command the respect and enjoy the popularity of its preceding editions.

THE INDIAN CONTRACT ACT, by Anukul Chandra Moitra, M.A., B.L., 1921. Price Rs. 7-8-0.

This is a commentary on the Indian Contract Act conceived in a perhaps novel plan. The learned author has given references to only Indian cases and omitted references to English cases as it is now nearly 59 years since the passing of the Act and most of the English cases have been followed in the Indian decisions. While we are inclined to agree with the learned author that most of the English cases of importance have been followed by the Indian Courts, it is difficult to believe that the Judges here have been able to command that legal style in laying down the principles of law which the great masters of the English law have wielded. It would therefore not have been superfluous to have stated the principles in the language of the English jurists and Judges themselves if especially we remember that the Act itself is only an amending and not a consolidating enactment and professes to give only some of the leading principles of the general law of contracts in the course of 75 sections and we have to turn almost at every step to English law. In some instances the references given to the English cases give one the impression that the learned author has not looked into the reports themselves. For example *Leslie* v. *Sheill* is referred to at pages 43 and 44 of the book as 3 K.B. 607 while as a matter it is (1914) 3 K.B. 607. There is a similar instance at page 257 of the case of *Lawford* v. *Billericay Rural District Council* which is referred to as reported in 1 K.B. 772 while it is reported in (1903) 1 K.B. 772. There are similar instances in other places in the book, *e.g.*, at pp. 199 and 563. The learned author has given the Sale of Goods Act, the Usurious Loans Act and the Interest Act with annotations thereon.

MADRAS DISTRICT MUNICIPALITIES ACT, by A. S. Sreenivasa Aiyar. Published by the Law Publishing Co., Mylapore. Price Rs. 3.

The book sets out the Act of 1920 with the amendments of 1930. Select cases decided under the Act are referred to in the notes under the corresponding sections, and the appendices contain the Statement of Objects and Reasons and the Report of the Select Committee. The printing and the get up are neat and the book will be found useful for purposes of ready reference to those who wish to acquaint themselves with the provisions of the Act.